

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

DAVID RICE and SUE RICE,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 3:22-cv-90-RLY-MPB
)	
SIGECOM, LLC d/b/a WOW! INTERNET,)	
CABLE AND PHONE,)	
)	
Defendant.)	

**DEFENDANT'S ANSWER TO
PLAINTIFFS' AMENDED COMPLAINT FOR DAMAGES,
JURY DEMAND AND AFFIRMATIVE DEFENSES**

Comes now the Defendant, by counsel, and for its Answer to Plaintiffs' Amended Complaint for Damages ("Amended Complaint"), says as follows:

ANSWER

1. Defendant is without sufficient information to admit or deny the material allegations contained in rhetorical paragraph 1 of Plaintiffs' Amended Complaint, and for that reason, requests strict proof thereof.

2. Defendant admits the material allegations contained in rhetorical paragraph 2 of Plaintiffs' Amended Complaint.

3. Defendant is without sufficient information to admit or deny the material allegations contained in rhetorical paragraph 3 of Plaintiffs' Amended Complaint, and for that reason, requests strict proof thereof.

4. Defendant admits the material allegations contained in rhetorical paragraph 4 of Plaintiffs' Amended Complaint.

5. Defendant denies the material allegations contained in rhetorical paragraph 5 of Plaintiffs' Amended Complaint.

6. Defendant denies the material allegations contained in rhetorical paragraph 6 of Plaintiffs' Amended Complaint.

7. Defendant admits that the cable was buried but is without sufficient information to admit or deny the remaining material allegations contained in rhetorical paragraph 7 of Plaintiffs' Amended Complaint, and for that reason, requests strict proof thereof.

8. Defendant denies the material allegations contained in rhetorical paragraph 8 of Plaintiffs' Amended Complaint.

9. Defendant denies the material allegations contained in rhetorical paragraph 9 of Plaintiffs' Amended Complaint.

10. Defendant incorporates herein by reference each and every response to rhetorical paragraphs 1 through 9 as though fully set forth herein, in response to rhetorical paragraph 10.

11. Defendant is without sufficient information to admit or deny the material allegations contained in rhetorical paragraph 11 of Plaintiffs' Amended Complaint, and for that reason, requests strict proof thereof.

12. Defendant denies the material allegations contained in rhetorical paragraph 12 of Plaintiffs' Amended Complaint.

13. Defendant denies the material allegations contained in rhetorical paragraph 13 of Plaintiffs' Amended Complaint.

14. Defendant denies the material allegations contained in rhetorical paragraph 14 of Plaintiffs' Amended Complaint.

15. Defendant denies the material allegations contained in rhetorical paragraph 15 of Plaintiffs' Amended Complaint.

WHEREFORE, Defendant prays the Court enter judgment in its favor and against Plaintiffs on Plaintiffs' Amended Complaint, for its costs expended herein and for all other just and proper relief in the premises.

JURY DEMAND

Defendant request trial by jury on all issues herein triable by jury as a matter of right.

AFFIRMATIVE DEFENSES

Comes now, the Defendant, by counsel, and for its Affirmative Defenses to Plaintiffs' Amended Complaint, says as follows:

1. Said Defendant's investigation into the facts underlying the Amended Complaint is ongoing.
2. Plaintiffs' claims may be barred or diminished to the extent that Plaintiffs' acts or omissions are subject to the provisions of the Indiana Comparative Fault Act.
3. Plaintiffs may have failed to mitigate their damages.
4. Plaintiffs' alleged damages may be solely the result of the acts or omissions of persons or entities other than this Defendant, including any responsible nonparties, whose names are not known at this time but may be ascertained through the process of discovery. Under the provisions of Ind. Code §34-51-2-16, Defendant reserves reasonable opportunity to: (1) discover the existence of nonparty defenses as alleged

here; (2) add nonparties at said Defendant's option; (3) withdraw any nonparty defenses as to discovery continues; and/or (4) request the Court to instruct the jury on any or none of the identified nonparties.

5. Defendant may be entitled to set-off against any judgment entered in favor of Plaintiffs, in the amount of collateral source payments received by Plaintiffs following the incident which is the subject of Plaintiffs' Amended Complaint pursuant to the legal and equitable principles of payment, satisfaction, accord and satisfaction, write-down, set-off, and other related rules barring windfalls and double recovery.

6. Some or all of Plaintiffs' medical expenses may have been reduced by write-offs, set offs, and/or adjustments in accordance with Indiana case law found in *Stanley v. Walker*, 906 N.E.2d 852 (Ind. 2009), *Patchett v. Lee*, 60 N.E.3d 1025 (Ind. 2016), and *Gladstone v. West Bend Mut. Ins. Co.*, 166 N.E.3d 362 (Ind. Ct. App. 2021), or any other applicable law. In the event it is subsequently determined that Plaintiffs' medical expenses were reduced by write-offs, set offs and/or adjustments, these amounts are appropriate matters for consideration by the jury.

7. Plaintiffs' alleged damages may have been pre-existing or caused by another accident, incident, or event. Defendant expressly disputes the nature and extent of Plaintiffs' alleged damages and disputes whether those damages were causally related to the occurrence at issue in this litigation.

8. Plaintiffs' damages, if any, may have been caused by intervening and superseding causes other than Defendant's acts or omissions.

9. Plaintiffs fail to state a claim upon which relief can be granted.

WHEREFORE, Defendant prays the Court enter judgment in its favor and against Plaintiffs on Plaintiffs' Amended Complaint, for its costs expended herein, and for all other just and proper relief in the premises.

Respectfully submitted,

TERRELL, BORN, SULLIVAN & FIESTER, LLP

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CABLE AND PHONE

CERTIFICATE OF SERVICE

I certify that on the 25th day of August, 2022, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties via the Court's Electronic Filing System:

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